WHATCOM COUNTY FIRE AGENCIES RADIO SYSTEM
INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** (the "Agreement") is made and entered into this 25th day of October, 2006 by and between the undersigned Whatcom County Fire Protection Districts and Whatcom County Cities (the "Members") providing fire protection and emergency medical services.

WHEREAS, on May 21, 1984 certain of the Members entered into an interlocal agreement entitled "Whatcom County Fire Agencies Radio System Interlocal Agreement" for the construction improvement, maintenance, and operation of a common emergency radio system ("Whatcom County Fire Agencies Radio System" or "Whatcom County FARS") in order to provide central communication for fire protection and emergency medical services; and

WHEREAS, the Whatcom County FARS maintains and operates a common emergency radio system with facilities on Sumas Mountain, Galbraith Mountain, H Street Road and may acquire additional sites in the future; and

WHEREAS, the Members desire that this Agreement supersede the May 21, 1984 Interlocal Agreement; and

WHEREAS, the Members desire to enter into this Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act); and

WHEREAS, the Members desire to allow for the participation of other Whatcom County governments (the "Associate Government Members") and other entities (the "Associate Non-Government Members") in the Whatcom County FARS.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Members agree as follows:

1. **Purpose**. The purpose of this Agreement is to provide for the cooperative improvement, maintenance, and operation of the Whatcom County FARS and other necessary and related equipment to operate a radio system for the Members.

2. **Name**. The name of the organization created by this Agreement is the Whatcom County Fire Agencies Radio System.

3. **Parties**. The following are authorized to participate in this Agreement:

3.1 Members. Those fire protection districts and cities in Whatcom County which provide fire and emergency medical services ("EMS") within Whatcom County may, upon approval of the Board (as the term is defined below), become parties to this Agreement by: (i) signing this Agreement; and (ii) paying their share of the construction, improvement and maintenance costs of the Whatcom County FARS in an amount provided herein.

3.2 Associate Government Members. Any other government within Whatcom County that desires to participate in this Agreement may, upon approval of the Board, become Associate Government Members by: (i) signing the Associate Member Agreement; and (ii) paying their share of the construction, improvement and maintenance costs of the Whatcom

County FARS in an amount provided herein. Associate Government Members will not be parties to this Agreement.

3.3 Associate Non-Government Members. Those non-government entities who have interest in participating in this Agreement may, upon approval of the Board, become Associate Non-Government Members by: (i) signing the Associate Member Agreement; and (ii) paying their share of the construction, improvement and maintenance costs of the Whatcom County FARS in an amount provided herein. Associate Non-Government Members will not be parties to this Agreement

4. **Use of Whatcom County FARS**. Each Member, Associate Government Member and Associate Non-Government Member shall have access to the Whatcom County FARS transmitter system as the Board shall determine. It is the intent of the Members that all Members, Associate Government Members and Associate Non-Government Members shall be able to utilize the Whatcom County FARS transmitter system for emergency radio communications.

5. **Term of Agreement**. The term of this Agreement shall commence upon execution by any Member and continue until the Agreement is terminated as provided herein.

5.1 Individual Member Termination. Any Member wishing to terminate its participation in this Agreement shall give written notice of its intent by July 31st of the year that it wishes to terminate its participation, which then shall be terminated on December 31st of that same year. The Member shall be responsible for its share of the Annual Allocation Amount (as the term is defined below) through the date of termination. An individual Member may be terminated by the Board of Directors for failure to provide a payment to the Whatcom County FARS when due. The terminating Member shall not be entitled to a return of any portion of the payments it contributed to Whatcom County FARS nor any portion of the assets of Whatcom County FARS.

5.2 Agreement Termination. This Agreement may be terminated upon the unanimous vote of all seven (7) members of the Board.

6. **Board of Directors**. The supervision and management of Whatcom County FARS shall be the vested in a board of directors (the "Board") composed of seven (7) members who are volunteers, employees or elected officials of a Member and appointed as follows:

- Three (3) representatives appointed by the Whatcom County Fire Commissioners Association.
- One (1) representative appointed by the City of Lynden.
- One (1) representative appointed by the City of Bellingham.
- Two (2) representatives appointed by the Whatcom County Fire Chiefs Association.

6.1 Board Management: Unless otherwise provided herein, the Board shall be responsible for the management and control of the Whatcom County FARS including but not limited to construction, lease, improvement or maintenance for the transmitters and all assets of the Whatcom County FARS, purchasing or leasing of real and personal property, the surplus and sale of real and personal property, application for grants, purchase of material or equipment using the state bid system, purchasing of appropriate insurance against liability or loss and the investment of idle funds.

6.2 Quorum and Majority Vote. A quorum of the Board shall consist of five (5) members of the Board. All actions of the Board shall be by majority vote of the members of the Board in attendance at a meeting of the Board.

6.3 Open Meetings Act and Public Records Act. The Whatcom County FARS and the Board shall comply with the provisions of the Open Meetings Act (Chapter 42.30 RCW) and the Public Records Act (Chapter 42.56 RCW).

6.4 Approval of Payments and Vouchers. All payments, made by voucher or otherwise, shall be approved in advance by the Board.

6.5 Fund Accounts. The Board shall establish an operating fund entitled the "Operating Fund of the Whatcom County FARS Board" and such other funds as the Board determines is appropriate with the Whatcom County Treasurer. All funds of the Whatcom County FARS shall be treated as public funds and accounted for in accordance with procedures set forth by the Washington State Auditor.

6.6 Annual Budget. The Board shall approve an annual budget each year. The first budget shall be for calendar year 2007. The Annual Budget shall include operating expenses, capital expenditures and necessary reserves.

6.7 System Utilization. The Board shall determine the procedures for system utilization by all Members, Associate Government Members and Associate Non-Government Members.

6.8 Associate Members. The Board may approve the participation of Associate Government Members and Associate Non-Government Members under such terms and conditions as the Board deems appropriate.

6.9 Insurance. The Board shall obtain and maintain:

- casualty insurance for loss or damage to property of Whatcom County FARS
- commercial general liability insurance in the amount of not less than $1,000,000 per occurrence and $1,000,000 aggregate
- such other insurance as the Board may deem appropriate

To the extent permitted by the insurance carrier, the Board will cause the Members, the Associate Government Members and the Associate Non-Government Members to be named as "additional insureds" for all acts of Whatcom County FARS.

7. **Officers**. The Board may appoint the following officers to carry on the day to day operations of the Whatcom County FARS who shall serve until their successors are appointed by the Board:

- The President shall preside over all meetings of the Board and who shall be responsible for the day to day management of the Whatcom County FARS.
- The Vice-President shall act in the place of the President when the president is unavailable.
- The Treasurer shall keep account of the financial affairs of the Whatcom County FARS and shall prepare an annual calendar year budget for approval of the Board.

- The Secretary shall keep the books and records of the Whatcom County FARS.

Members of the Board may also serve as officers.

8. **Lead Agency**. The Board may designate one Member to act as the lead agency (the "Lead Agency") to house the records of the Whatcom County FARS and to take such other actions as the Board may authorize. The Board may change the lead agency designation as it deems appropriate.

9. **Annual Contribution**. The Members, Associate Government Members and Associate Non-Government Members shall contribute the following for the on-going operation and capital costs of the Whatcom County FARS System. Each year the Board, after approving the budget, shall determine the total amount that must be contributed by the Members, Associate Government Members and Associate Non-Government Members to Whatcom County FARS (the "Annual Contribution Amount"). The Annual Contribution Amount shall then be assessed as follows:

9.1 Associate Government Members and Associate Non-Government Members. Associate Government Members and Associate Non-Government Members shall pay an annual amount determined by the Board.

9.2 Members. After allocation of a portion of the Annual Contribution Amount to the Associate Government Members and Associate Non-Government Members, the Members shall pay: (i) an annual base fee of three hundred dollars ($300), or more as the Board may determine; and (ii) a percentage of the balance of the Annual Contribution Amount. The percentage shall be equal to the percentage that the Member's assessed valuation comprises the total assessed valuation of all Members. Those Members who have consolidated their municipal corporations for the purpose of operation and administrative costs, but remain separate legal entities, shall each be required to pay the Contribution set forth above until they merge into one legal entity at which time they shall be treated as one Member for the purposes of this Agreement.

10. **Ownership and Termination**. Each Member shall hold an undivided interest in all the real and personal property of Whatcom County FARS. Upon termination of the Whatcom County FARS real and personal property of Whatcom County FARS shall be divided (either in kind or the proceeds of a sale) to the Members based upon the percentage of each Member's initial contribution as determined by the Board.

11. **Survivability**. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

12. **Notices**. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to each Member at the official address of that Member or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

15. **Neutral Authorship**. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all Members hereto. Frank J. Chmelik of Chmelik Sitkin & Davis, PS has prepared this Agreement on behalf of Whatcom County FARS. Each Member hereby specifically waives, pursuant to RPC 1.7, any claim of conflict created by virtue of Frank J. Chmelik of Chmelik Sitkin & Davis, PS's representation of that Member in other matters

16. **Governing Law**. This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Whatcom County, Washington.

17. **Supersedes May 21, 1984 Interlocal Agreement**. This Agreement supersedes the May 21, 1984 interlocal agreement. Each Member hereby releases any claim it may have arising from that May 21, 1984 interlocal agreement, including any claim to the Whatcom County FARS assets upon termination of that agreement.

18. **No Whatcom County FARS Liability**. No Member, Associate Government Member or Associate Non-Government Member shall make a claim or demand against Whatcom County FARS or any other Member, Associate Government Member or Associate Non-Government Member arising from or related to property damage or personal injury alleged to have occurred as the result of a failure to provide emergency radio communication services under this Agreement. As part consideration for participation in this Agreement, each Member hereby forever releases and discharges Whatcom County FARS and the other Members, Associate Government Members or Associate Non-Government Members from any claim related to property damage or personal injury alleged to have occurred as the result of a failure to provide emergency radio communication services under this Agreement.

19. **Entire Agreement**. The entire agreement between the parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to Whatcom County FARS, including the May 21, 1984 interlocal agreement.

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date and year above.

FIRE DISTRICTS

Fire District No. 1

By:
Its:

Fire District No. 2

By:
Its: David M. Ralston

CITIES

City of Bellingham

See attached

By:
Its:

City of Lynden

By:
Its: Jack Louws mayor

Fire District No. 3

By:
Its:

Fire District No. 4

By:
Its: Fire Chief

Fire District No. 5

By: (W. H. MEVERSIEK)
Its:

Fire District No. 6

By:
Its:

Fire District No. 7

By:
Its: Patty R. Markel

Fire District No. 8

By: COMMISSIONER
Its:

Fire District No. 9

By:
Its:

Fire District No. 10

By:
Its:

Fire District No. 11

By:
Its: Barbara Wallace

Fire District No. 13

By:
Its:

Fire District No. 14

By:
Its:

Fire District No. 16

By:
Its:

Fire District No. 17

By:
Its:

Fire District No. 18

By:
Its:

Fire District No. 19

By:
Its:

Executed, this the _____ day of _____, 2007 for **WHATCOM COUNTY FIRE AGENCIES.:**

SEE ATTACHED

Executed, this the 15th day of October, 2007 for the **CITY OF BELLINGHAM**:

Tim Douglas, Mayor

ATTEST:

Finance Director

DEPARTMENTAL APPROVAL:

Fire Chief Bill Boyd

APPROVED AS TO FORM:

Office of City Attorney

FORM OF
ASSOCIATE MEMBER AGREEMENT

This **ASSOCIATE MEMBER AGREEMENT** (the "Agreement") is made and entered into this ___ day of _____, 2006 by and between the _____ ("_____") and the Whatcom County FARS.

WHEREAS, the pursuant to an interlocal agreement dated October ____, 2006 (the "Interlocal Agreement") Whatcom County FARS maintains and operates a common emergency radio system with facilities on Sumas Mountain, Galbraith Mountain, H Street Road and may acquire additional sites in the future; and

WHEREAS, the Members desire to allow for the participation of other Whatcom County governments (the "Associate Government Members") and other entities (the "Associate Non-Government Members") in the Whatcom County FARS.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Whatcom County FARS and the _____ agree as follows:

1. **Participation in Whatcom County FARS**. _____ shall participate in Whatcom County FARS as an Associate [Non] Government Member pursuant to the terms of the Interlocal Agreement, a copy of which has been provided to _____.

2. **Financial Contribution**. _____ shall pay an annual contribution of $ _____ for the balance of calendar year 200_ and $_____ for calendar year 200_ through 200_. Thereafter, the annual contribution will be determined by the Board of Directors as provided in the Interlocal Agreement.

3. **Term of Agreement**. The term of this Agreement shall commence upon execution by _____ and continue until the Agreement is terminated as provided herein.

4. **Associate Member Termination**. _____ may terminate this Agreement by providing written notice of its intent by July 31st of the year that it wishes to terminate its participation, which then shall be terminated on December 31st of that same year. _____ shall be responsible for its share of all costs through the date of termination. _____ may be terminated by the Board of Directors for failure to provide a payment to the Whatcom County FARS when due.

5 **No Whatcom County FARS Liability**. _____ shall not make a claim or demand against Whatcom County FARS or any other Member, Associate Government Member or Associate Non-Government Member arising from or related to property damage or personal injury alleged to have occurred as the result of a failure to provide emergency radio communication services under this Agreement. As part consideration for participation in this Agreement, _____ hereby forever releases and discharges Whatcom County FARS and the other Members, Associate Government Members or Associate Non-Government Members from any claim related to property damage or personal injury alleged to have occurred as the result of a failure to provide emergency radio communication services under this Agreement.

6. **Interlocal Agreement**. The Interlocal Agreement and all the terms thereof are hereby incorporated by reference and shall be binding on _____.

7. **Survivability**. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

8. **Notices**. All notices, demands, requests, consents and approvals which may, or are required to be given by one party to the other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

WHATCOM COUNTY FARS: _____
_____
_____

_____: _____
_____
_____
_____

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

9. **Amendment**. No modification, termination or amendment of this Agreement may be made except by written agreement signed by both parties.

10. **Waiver**. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11. **Captions**. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

12. **Neutral Authorship**. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

13. **Governing Law**. This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the

parties agree that in any such action, venue shall lie exclusively in Whatcom County, Washington.

14. **Entire Agreement**. The entire agreement between the parties hereto is contained in this Agreement and the Interlocal Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year above.

WHATCOM COUNTY FARS

By:
Its:

By:
Its:

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